IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Bail Appl..No. 4838 of 2007()

[CRIME NO.141/07 OF ERATTUPETTA POLICE STATION]

PETITIONER/2ND ACCUSED

DILEEP, S/O. DIVAKARAN NAIR,
THAZHATHU VALLIATH HOUSE,
ALANADU KARA,BHARANAGANAM VILLAGE.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4838 of 2007

Dated this the 10th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner is arrayed as the second accused. The alleged incident had taken place on 6/4/2007. Being Good Friday, it was supposed to be a dry day. A police party found licensee of the shop and a person, allegedly an employee of the licensee, engaging themselves in the sale of liquor in the premises of the toddy shop. Seeing the police party both took to their heels. The employee of the licensee is not named in the F.I.R. Investigation continued. In the course of the investigation, the petitioner has allegedly been identified to be the employee of the licensee who was available at the scene and was found vending Indian made foreign liquor in the premises of the licensed toddy shop. The petitioner has not been arrested yet. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has not been named in the F.I.R. He was not an employee of the toddy shop. No

records show that he is an employee of the toddy shop. The petitioner, in these circumstances, prays that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available indications clearly shows that the licensee and an employee of his (the petitioner) were engaged in the activity of illicit sale of I.M.F.L in a toddy shop on a dry day. At the moment and with the available inputs there is absolutely no reason to doubt that the case of the investigating officer that the petitioner was present along with the licensee and was engaging himself in the activity of sale of I.M.F.L. At any rate, there are no circumstances at all justifying the invocation of the discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. Even regular bail can be granted to the petitioner only if this court is in a position to entertain the twin satisfactions under Section 41A of the Kerala Abkari Act. I do not find any features in this case

which would justify invocation of such extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007